

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.672 of 2010

Chennai Sri Ekambareswarar Thirukovil,
Rep. By its Executive Officer,
No.315, Mint Street, Park Town,
Chennai – 600 003.

... Petitioner/Decree Holder/Plaintiff

Vs.

Mr.Srimal B.Jain (Died)

2. Suresh S.Jain

... Respondent/J.D.1/1st defendant

(R2 brought on record as LR of the deceased
sole respondent vide Court order dated 19.02.2014
made in CMP.No.5941 of 2017 in CRP No.672/2010)

PRAYER: Civil Revision Petition filed under Section 115 of civil procedure code against the order and decreetal order passed in E.P.No.962 of 2008 in O.S.No.7260 of 1993 dated 19.11.2009 on the file of X Asst. Judge, City Civil Court, Chennai.

For Petitioner

: Mr. D.R.Sivakumar

For Respondents

: R1-Died (memo recorded)

R2- No appearance

ORDER

Aggrieved over the dismissal of the execution petition filed by the decree holder, the present revision petition is filed.

2. The brief facts leading to file this revision is as follows:

The revision petitioner has filed a suit in O.S.No.7260 of 1993 for the recovery of possession for damages. The above suit was decreed with the following conditions:

The first defendant has to pay a sum of Rs.1,300/- p.m. as a rent till the date of a decree. Thereafter, he has directed to pay a sum of Rs.2,850/- p.m. till the Fair Rent is fixed. In the event of failure to comply with the above conditions the first defendant has to vacate the premises within a period of three months.

3. In pursuant to the above judgement and decree, the execution petition has been filed by the temple. The learned X Assistant Judge has dismissed the execution petition on the ground that judgement and decree are silent on payment of rent after fixation of fair rent since the fair rent is fixed as per G.O.No.353 dated 04.06.1999, the execution petition is not maintainable.

4. Heard the learned counsel for the revision petitioner and no representation of the respondent.

5. The Judgment of the trial Court in the above judgment is very clear that till the decree and judgment dated 31.10.2001, the first defendant is bound to pay a sum of Rs.1,500/- p.m. and from the date of decree and judgment i.e., from 31.10.2001, he has to pay a sum of Rs.2,850/-.

6. According to the learned counsel for the revision petitioner, the Fair rent has been fixed and communicated on 20.10.2018. The Records produced before this Court indicates that the rent has not been paid as directed by the decree, whereas, the decree and judgment has not been complied by paying a sum of Rs.2850/- p.m. as ordered in the decree. The defendants are bound to vacate and handover the possession of the property. The Execution Court beyond the scope of the decree had given its interpretations. The Execution Court ought to have seen that the decree is executable on breach of direction contained in the judgment and decree when the defendants failed to comply the orders of the Court being the parties or legal representative of the parties. The said judgment is certainly bind the judgement debtor and his legal heirs.

7. Therefore, I am of the view that the Execution Court dismissing the petition filed for eviction is not in accordance to law, the same is set aside and

N.SATHISH KUMAR, J.

msv

Execution Court is directed to proceed with the execution proceedings and pass an orders on merits for delivering the property to the decree holders.

8. According, the civil revision petition is allowed. No costs.

22.04.2019

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

To

The X Asst. Judge,

City Civil Court, Chennai.

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